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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL CONTEMPT PETITION NO.23 OF 2003

Amita Devnani Petitioner
versus
Bhagwan H. Devnani & another Respondents

Ms.Sonal for petitioner.

Mr.A.Y.Sakhar, Sr.Adv. with M.P.Bhatt for respondent no.1.

Mrs.P.H.Mantharia, APP for State.

CORAM : F.I.REBELLO AND
R.V.MORE, JJ.

DATE : 17th January 2007

PC :

1. The petitioner has addressed a letter to learned Advocate General of the State of Maharashtra to grant consent to move this Court for taking cognizance of the criminal contempt in terms of the draft contempt petition, as filed. The learned Advocate General by letter of 19th July 2003 granted consent to file a criminal contempt petition u/s 15(1)(c) of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Contempt of Courts Act".) Learned counsel for the

petitioner has submitted draft charges which read as under :-

"I) FIRST :-

That you have committee criminal contempt of court by filing and prosecuting collusive proceedings for eviction under section 24 of the Maharashtra Rent Control Act, 1999 being Application No.35 of 2002 before the Competent Authority, Maharashtra Rent Control Act, Konkan Division, Bandra, Mumbai with a view to defeat the rights of the petitioner and by making false statements on oath to mislead the Court and thereby prejudicing the interfering with the due course of the said application and interfering with and obstructing with the administration of justice and thereby committed an offence punishable under section 12(1) of the Contempt of Courts Act, 1971 and Article 215 of the Constitution, and within the cognizance of this Court;

II) SECONDLY :-

That in the course of the trial of the Application No.35 of 2002 filed under the Maharashtra Rent Control Act, 1999 before the Competent Authority, Maharashtra Rent Control Act, Konkan Division, Bandra, Mumbai, you have given false evidence on oath, fabricated false evidence which you either knew or believed to be false or fabricated or did not believe to be true, with a view to get favourable orders from the Court and thereby prejudicing and interfering with the due course of the said application and interfering with and obstructing with the administration of justice and thereby committed an offence punishable under section 12(1) of the Contempt of Courts Act, 1971 and Article 215 of the Constitution, and within the cognizance of this Court;

III) THIRDLY :-

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That you withdrew the divorce petition M.J.Petition No.A-492 of 1999 filed by you in the Honourable Family Court at Bandra, Mumbai by making an application on or about 19.10.2002, thus disobeying, avoiding compliance of and/or committing breach of the order dated 30.10.01 of the Honourable Family Court, Bandra and/or thereby attempting to disobey, avoid compliance of and/or commit breach of the order dated 30.10.01 of the Honourable Family Court, Bandra and thereby interfering with and obstructing with the administration of justice and thereby committed an offence punishable under section 12(1) of the Contempt of Courts Act, 1971 and Article 215 of the Constitution, and within the cognizance of this Court."

The matter has come up for framing charges today.

2. The proposed charge First and Second are based on proceedings taken out by the Hakumat J. Devnani, since deceased, against respondent no.1 Bhagwan H. Devnani. The case of the deceased was that the respondent no.1 was the licensee and a cause of action has been arisen for his eviction. The petitioner was originally not a party to the said proceedings. On an application, she was added as a respondent. The contention of the petitioner was that it was a matrimonial home and the proceedings were brought between respondent no.1 and the deceased Hukumat J. Devnani. The Trial Court, however, by order dated 5th September 2002 was pleased to allow the

proceedings in favour of the deceased Hukumat J. Devnani. The petitioner aggrieved by the same has preferred a petition before this Court being Writ Petition No.58 of 2004 which is admitted and pending and wherein an interim relief has been granted. It is in this context that we will have to consider whether the charges in terms of the draft charge first and second can be framed. Prima facie, there is a finding in favour of the deceased Hukumat J. Devnani and Bhagwan H. Devnani. It is only in the event this Court in exercise of its writ jurisdiction interfers with the order passed in favour of deceased Hukumat J. Devnani and/or records any finding as to collusive proceedings, at the highest, it will be open to this Court to entertain a petition for criminal contempt, provided the predicates of Section 2(c) of the Contempt of Courts Act, 1971 are satisfied. In our opinion, therefore, it would be premature to frame draft charges first and second and consequently no charge in terms of draft charge first and second can be framed.

3. Third draft charge is in the matter of withdrawal of proceedings in M.J.Petition No.A/429/1999 by application of 19th October 2002. The contention of the petitioner is that

there was an order of maintenance in favour of the petitioner and respondent no.1 withdrew the said petition with a view to defeat the order in favour of the petitioner. In respect of maintenance, the petitioner had filed proceedings by way of civil contempt. The learned Trial Court has found respondent no.1 of guilty of civil contempt but did not impose any punishment, if respondent no.1 purged the contempt by depositing the amount of maintenance which was due and payable. Respondent no.1 has paid the said maintenance amount. However, has also preferred an appeal against the order of the learned Trial Court, which appeal has been admitted being Contempt Appeal No.6 of 2006. Be that as it may, mere withdrawal of the proceedings, even if that would result in defeating the rights of the petitioner, would not fall within the definition of criminal contempt u/s 2(c) of the Contempt of Courts Act, 1971. In our opinion, therefore, no material is placed before us or is available to frame a charge of draft charge no.3.

4. The learned counsel points out that respondent no.1 in the proceedings before the Family Court, has made several averments which

are false to his knowledge and/or inconsistent with other statements. Reference is made to the application made before the Family Court. The proceedings were for divorce. In the verification clause, respondent no.1 has not set out contents of any specific paragraph to be to his knowledge. The verification is "what is set out in the application is true to his knowledge and belief." The pleadings is not an affidavit on oath which could be considered as an evidence before this court. They continued to remain as pleadings. In order to initiate proceedings of contempt, the petitioner must establish that those pleadings interfers or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. The issue whether the petitioner had means of livelihood or not is by way of a pleading to which the defence would have been that he had adequate means for payment of maintenance. These are mere pleadings in respect of which an issue will arise and parties will have to lead evidence. This by itself would not invite either the predicates of Section 2(c)(iii) of the Contempt of Courts Act. Therefore, we are of the opinion that even though the counsel for the petitioner had not submitted draft charge on that

count, after examining the contents and the nature of the contempt alleged presented before us, no case is made out for framing of charge on that count also.

5. For the aforesaid reasons we find no reason to entertain the contempt petition as filed and it is consequently dismissed. Rule is discharged.

(R.V.MORE, J.) (F.I.REBELLO, J.)